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SUPREME COURT, U.S.

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1985

No. **85-5555**

ALVIN R. MOORE, JR.,  
Petitioner,

v.

FRANK BLACKBURN, Warden,  
Louisiana State Penitentiary,  
Respondent.

---

PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

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309W

QUESTIONS PRESENTED

- I. SHOULD THE COURT RESOLVE THE CONFLICT AMONG THE LOWER COURTS ON A MAJOR QUESTION THAT HAS BEEN PENDING SINCE IT WAS POSED BY THIS COURT IN 1968: THE CONSTITUTIONALITY OF DEATH-QUALIFIED JURIES AS TRIERS OF GUILT OR INNOCENCE IN CAPITAL CASES?
- II. IS PETITIONER'S DEATH SENTENCE UNCONSTITUTIONALLY UNRELIABLE UNDER THE STANDARD ENUNCIATED BY THE COURT IN CALDWELL v. MISSISSIPPI?

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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM 1985  
No. 85-

ALVIN R. MOORE, JR.,           \*  
Petitioner,                   \*  
v.                               \*  
FRANK BLACKBURN, Warden,   \*  
Louisiana State Penitentiary,\*  
Respondent.                   \*

---

PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
FIFTH CIRCUIT

---

Petitioner, Alvin R. Moore, Jr., respectfully prays  
that a writ of certiorari issue to review the judgment of  
the United States Court of Appeals for the Fifth Circuit in  
Moore v. Blackburn, \_\_\_\_ F.2d. \_\_\_\_ (October 3, 1985).

CITATION TO OPINION BELOW

The opinion of the Court of Appeals, rendered on  
October 3, 1985, is attached hereto as Appendix A. The  
Opinion of the district court below is attached hereto as  
Appendix B.

JURISDICTION

Jurisdiction of this Court is invoked under 18 U.S.C.  
§1254(1). The opinion of the Court of Appeals was rendered  
on October 3, 1985.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Sixth, Eighth, and Fourteenth  
Amendments to the Constitution of the United States.

STATEMENT OF THE CASE

Petitioner, Alvin R. Moore, Jr., was convicted of  
first-degree murder and sentenced to death by the 26th  
Judicial District Court, Bossier Parish, Louisiana on  
October 30, 1980. On direct appeal to the Supreme Court of  
Louisiana, the judgment and sentence of the trial court was  
affirmed. State v. Moore, 414 So.2d 340 (La. 1982).

A Petition for Writ of Certiorari was denied by  
the Supreme Court of the United States on June 27, 1983.  
Moore v. Louisiana, \_\_\_\_ U.S. \_\_\_\_, 103 S.Ct. 3553 (1983).

Petitioner sought post conviction habeas corpus  
relief on August 6, 1983 in the 26th Judicial District Court  
of Bossier Parish, Louisiana which was denied that day.

Writs were taken to the Louisiana Supreme Court  
which were denied on August 8, 1983, with Chief Justice  
Dixon and Justices Calogero and Dennis dissenting.

After state post conviction remedies were exhaust-  
ed, Petitioner filed a Petition for Writ of Habeas Corpus  
pursuant to 28 U.S.C. §2254 in the United States District  
Court for the Western District of Louisiana on August 9,  
1983. After a two day evidentiary hearing, the Honorable  
Tom Stagg granted on October 24, 1983, partial habeas relief  
on the basis of the denial of effective assistance of  
counsel at the penalty phase of petitioner's trial. Respon-  
dents appealed to the United States Court of Appeals for the  
Fifth Circuit, which court reversed Judge Stagg's partial  
grant of federal habeas relief on August 15, 1984.

Petitioner's Application for Stay of Execution  
pending filing and disposition of a petition for writ of  
certiorari was granted on November 8, 1984. A petition for  
writ of certiorari was denied by the United States Supreme



Court on June 24, 1985. Petitioner's Motion for Rehearing was denied on August 28, 1985.

On September 30, 1985, Petitioner filed a petition for post conviction relief and writ of habeas corpus in the 26th Judicial District Court of Bossier Parish, Louisiana which was summarily denied.

Writs were taken to the Louisiana Supreme Court on September 30, 1985, which were denied on October 1, 1985, with Chief Justice Dixon dissenting.

After state post conviction remedies were exhausted, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §2254 in the United States District Court for the Western District of Louisiana on October 1, 1985. The Petition and a stay of execution were denied on October 2, 1985. A Certificate of Probable Cause was granted on October 2, 1985. Then, on October 3, 1985, the United States Court of Appeals for the Fifth Circuit, sua sponte, without answer or motion from the state, remanded the case to the district court for the limited purpose of enabling the district court to reconsider the granting of a Certificate of Probable Cause. In response, the district court recalled its previously granted Certificate as improvidently granted and denied petitioner's request for a Certificate of Probable Cause.

Petitioner immediately appealed to the United States Court of Appeals for the Fifth Circuit, requesting a stay of execution. After the district court reversed its order, in response to the appellate court's remand, petitioner then immediately filed with the appellate court an Application for a Certificate of Probable Cause. These were denied by the appellate court on October 3, 1985.

#### REASONS FOR GRANTING THE WRIT

- I. THE COURT SHOULD GRANT CERTIORARI TO RESOLVE A CONFLICT AMONG THE LOWER COURTS ON A MAJOR QUESTION THAT HAS BEEN PENDING SINCE IT WAS POSED BY THIS COURT IN 1968: THE CONSTITUTIONALITY OF DEATH-QUALIFIED JURIES AS TRIERS OF GUILT OR INNOCENCE IN CAPITAL CASES

The question raised by this petition -- the constitutionality of "death-qualified" juries as triers of guilt or innocence in capital cases -- was first posed by the Court in 1968 in Witherspoon v. Illinois, 391 U.S. 510, 520 n.18 (1968), and was left unresolved. It has recently been the subject of a large and rapidly growing body of litigation in capital cases in the state courts and the lower federal courts. Although it has produced conflicting opinions from these courts, the Supreme Court of the United States has not yet readdressed the issue.

Lower court cases have followed one of two paths: (i) some have addressed the death-qualification issue as an empirical question and have held that death-qualification is (or might be) unconstitutional because of its effects on the composition, attitudes and behavior of capital juries; while (ii) some have held that this practice presents a legal issue only, and have held that death-qualification is constitutional despite its effects on capital juries.

The first appellate case that addressed the empirical issue on the basis of a complete factual record including the more recent studies on death-qualification was Hovey v. Superior Court, 28 Cal.2d 1, 616 P.2d 1301 (1980). In Hovey, the California Supreme Court found that a death-qualified jury selected by the procedures outlined in Witherspoon -- a "Witherspoon-qualified" jury -- "would not be neutral" on the question of guilt. Hovey, supra, 28 Cal. 2d at 68, 616 P.2d at 1343-46.

In 1980 the Eighth Circuit held that a state prisoner in Arkansas, was entitled to a federal habeas corpus hearing on his claim that the death-qualified jury that tried him was unconstitutional. Grigsby v. Mabry, 637 F.2d 525 (8th Cir. 1980). The central question that the Eighth Circuit identified for consideration at that hearing was "whether death-qualified jurors are more likely to convict than jurors selected without regard for their views on the death penalty;" if that question is answered affirmatively "Grigsby has made a case that his constitutional rights have been violated and he would be entitled to a new trial." Id. at 527.

The hearing on remand in Grigsby was conducted in the United States District Court for the Eastern District of Arkansas, and was comparable in scope to the Hovey hearing. It included evidence on all the new studies first presented in Hovey, and it also included extensive new evidence demonstrating that the occasional exclusion of an "automatic death penalty juror" from a capital case has an insignificant impact on the demonstrated biasing effects of death-qualification. In August of 1983, Judge G. Thomas Eisele of the Eastern District of Arkansas filed a detailed opinion based on his record, holding that the present form of death-qualification is unconstitutional on two grounds: (i) that it biases capital juries against the defendants in the determination of guilt or innocence; and (ii) that it denies capital defendants their Sixth Amendment right to a jury on the question of guilt or innocence that is drawn from a fair cross-section of the community. Grigsby v. Mabry, 758 F.2d 226 (8th Cir. 1985) (en banc).

At the district court level, Keeten v. Garrison, 578 F.Supp. 1164 (W.D.N.C. 1984), was similar to the Grigsby case both in form and in content. Keeten was a state prisoner who claimed in a federal habeas corpus proceeding

that his constitutional rights were violated by the use of a death-qualified jury to determine his guilt or innocence in the North Carolina state court. The evidentiary record in Keeten is comparable to that in Grigsby and the judgment of the trial court, the Honorable James B. McMillan of the Western District of North Carolina, was the same: That the evidence in the record answers the question posed in Witherspoon and demonstrates that death-qualification produces juries that are "less than neutral with respect to guilt." Keeten v. Garrison, 578 F.Supp. 1164 (W.D. N.C. 1984). The judgment of the District Court was reversed by the Fourth Circuit in Keeten v. Garrison, 742 F.2d 129 (4th Cir. 1984). The opinion of the Fourth Circuit in Keeten does not rest on the factual issues posed by the record, but on its view of the law.

Until 1978, every court that had considered the issue agreed that if proof could be marshalled that such juries are more likely to convict than ordinary, fully representative criminal juries, a constitutional violation would be established. But, in 1978, in the case of Spinkellink v. Wainwright, 578 F.2d 582 (5th Cir. 1978), cert. denied, 440 U.S. 976 (1979), the former Fifth Circuit held otherwise:

When petitioner asserts that a death-qualified jury is prosecution-prone, he means that a death-qualified jury is more likely to convict than a non-death-qualified jury . . . . Even if this is true the petitioner's contention must fail. That a death qualified jury is more likely to convict than a non-death-qualified jury does not demonstrate which jury is impartial. Id. at 594.

Spinkellink rejects the empirical issue; it holds that there is no factual issue to be decided at all: if each juror who tried the defendant was individually "fair and impartial," nothing more can be asked.



The Spinkellink reasoning ignores the basic constitutional rule that a jury is not just any group of jurors who are individually fair-minded. If that were so, juries could consist entirely of fair-minded whites or fair-minded Democrats. But it ought not be enough that a jury is fair, a jury must also fairly reflect the community from which it is drawn, both in its composition, see Taylor v. Louisiana, 419 U.S. 522 (1975); Duren v. Missouri, 438 U.S. 357 (1979), and in its predispositions. This rule was applied by the Court in Witherspoon when it prohibited juries that are "uncommonly willing to condemn a man to die." 391 U.S. at 521. Yet Spinkellink on this issue remains the law in the present Fifth and Eleventh Circuits. See Smith v. Balkcom, 660 F.2d 473 (5th Cir., Unit B, 1981), modified on other grounds, 671 F.2d 858 (1982).

A certain reluctance on the part of the Fifth Circuit to follow Spinkellink was evidenced in Knighton v. Maggio, 740 F.2d 1344 (5th Cir. 1984). In Knighton, a panel of the Fifth Circuit, citing the district court decisions in Grigsby and Keeten, stated that the petitioner's argument against death-qualification "is not to be gracelessly ignored, but it must be directed to other fora, legislative and judicial. It is not for this Court, at this time in this setting, to plow that legal furrow." 740 F.2d at 1351.

The Fourth Circuit chose to follow Spinkellink in its review of Feeten. Reversing the record-based judgment of the district court the Fourth Circuit held that the conviction-proneness of death qualified juries is of no constitutional consequence.

While the Seventh Circuit has not faced the task of analyzing all presently available empirical evidence on death-qualification, its position on the legal issue is clear and it is in direct conflict with Spinkellink and its progeny: "the decision on this issue rest[s] on empirical

analysis . . . . United States ex rel. Clark v. Fike, 538 F.2d 750, 762 (7th Cir. 1976); see also, United States ex rel. Townsend v. Twomey, 542 F.2d 350, 362-63 (7th Cir. 1972).

This issue has not been determined by the Ninth Circuit, but it appears that the court is aware of the question and its ramifications. See United States v. Harper, 729 F.2d 1216 (9th Cir. 1984) (Fletcher, J., concurring): "[W]hether a verdict returned by such a 'death-qualified jury' can withstand constitutional scrutiny is a complex and difficult constitutional question" that should not be decided before a decision is necessary. In a recent district court case, a federal judge in the Ninth Circuit analyzed the problem as an empirical issue, in accord with Hovey v. Superior Court, supra, but found that the evidence that was proffered to it was too limited to fill the one factual gap left by the Hovey opinion (the possible effects of excluding "automatic death penalty" jurors from capital cases). Harris v. Pulley, No. 82-0249E (S.D. Cal. July 26, 1984). That decision is pending on appeal to the Ninth Circuit.

In sum, the Fourth, Fifth and Eleventh Circuits have held that it is constitutional to use death-qualified juries to determine guilt, even if they are uncommonly conviction-prone. The Eighth Circuit has recently held that such a demonstration has been made, and has outlawed the practice. The matter is pending before the Ninth Circuit on appeal from a district court opinion apparently adopting the Seventh and Eighth Circuits' legal position; and the remaining circuits have not yet been obligated to face this question.

A few state courts have rejected arguments against death-qualification summarily, purporting to rely on Witherspoon, see e.g., State v. Trujillo, 99 N.M. 251, 657



P.2d 107 (1983); Commonwealth v. Maxwell, 477 A.2d 1309 (Pa. 1984), but most state-court cases fall into one of the two camps that divide the federal courts. Some state courts have followed Spinkellink and have held that death-qualification poses no constitutional problems, regardless of its effects on the likelihood of conviction. See, e.g., People v. Hamilton, 100 Ill. App. 3d 442, 427 N.E.2d 388 (1981); State v. Mercer, 618 S.W.2d 1 (Mo. 1981); Fielden v. State, 437 N.E.2d 986 (Ind. 1982), see also, Rector v. State, 280 Ark. 385, 659 S.W.2d 168 (1983).

Hovey remains the law in California, but no California decision to date has addressed the constitutionality of death-qualification in light of the recently available data on the inconsequential effects of excluding "automatic death penalty" jurors. Other states have followed Hovey's legal analysis on the basis of widely varying factual records. See, e.g., State v. Peyton, 20 Wash. App. 701, 630 P.2d 1362 (1981); State v. Bount, 472 A.2d 1340 (Del. Super. 1984); Chadderton v. State, 456 A.2d 1313 (Md. App. 1983). See also, Justus v. Commonwealth, 222 Va. 667, 283 S.E.2d 905 (1981), cert. denied, 455 U.S. 983 (1982).

As petitioner has pointed out, there are irreconcilable differences among the state and federal courts on the constitutional issue of the systematic exclusion for cause from a capital defendant's guilt or innocence trial of those jurors who could not return a verdict of death at the sentencing phase of a capital trial.

II. THE COURT SHOULD GRANT CERTIORARI TO OVERTURN A DEATH SENTENCE THAT IS UNCONSTITUTIONALLY UNRELIABLE UNDER THE STANDARD ENUNCIATED BY THE COURT IN CALDWELL v. MISSISSIPPI

This past term, the United States Supreme Court held for the first time that it is "constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere." Caldwell v. Mississippi, \_\_\_\_ U.S. \_\_\_\_, 105 S.Ct. 2633, 2639 (1985).

In Caldwell, the prosecutor argued:

Now they would have you believe that you're going to kill this man and they know -- they know that your decision is not the final decision. My God, how unfair can you be? Your job is reviewable. . . . [T]he decision you render is automatically reviewable by the Supreme Court.

Id. at 2637-2638. Likewise, at petitioner's penalty phase, the prosecutor argued:

And it's a tough thing to ask, but there is only one penalty really available for this type of crime and that is the death penalty. This is where it will begin. From the next point forward it goes through the court system to be thoroughly reviewed and checked, through every court in this land. But it has to begin here, right here with the jury.

Trial Transcript at 776. (Emphasis added.)

As Court concluded in Caldwell: "Because we cannot say that this effort had no effect on the sentencing decision, that decision does not meet the standard of reliability that the Eighth Amendment requires." Id. at 2646. This is no less true in petitioner's case. Accordingly, Caldwell requires that petitioner's sentence of death be overturned.

#### CONCLUSION

As noted by the foregoing argument, irreconcilable differences exist among the state and federal courts on the constitutional issue of the systematic exclusion for cause from a capital defendant's guilt or innocence trial of those jurors who could not return a verdict of death at the sentencing phase of a capital trial. A definitive ruling from this Court is necessary to resolve this conflict. Alvin R. Moore, Jr.'s life should not hinge on the speed through which his case made it through our judicial system. Justice cannot be served if the State of Louisiana is allowed to kill Alvin R. Moore, Jr. while important federal constitutional issues raised in his case lay unresolved. Given the realistic premise that a definitive ruling from this Court on the constitutionality of death-qualified juries will be reached in just a matter of months, it is only right that this Court stop the scheduled execution of Alvin R. Moore, Jr. from taking place.

WHEREFORE, based on the foregoing reasons, this Court should grant a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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U.S. COURT OF APPEALS  
**FILED**  
 IN THE UNITED STATES COURT OF APPEALS  
**OCT 3 '85**  
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No. 85-4706

ALVIN R. MOORE, JR.,

Petitioner-Appellant,

v.

FRANK BLACKBURN, WARDEN, LOUISIANA STATE  
 PENITENTIARY, ANGOLA, LOUISIANA,

Respondent-Appellee.

Appeal from the United States District Court  
 for the Western District of Louisiana

( October 3, 1985 )

Before GEE, POLITZ and RANDALL, Circuit Judges.

PER CURIAM:

It is ORDERED that petitioner's application for a certificate of probable cause and his motion for a stay of execution are denied.

The first issue raised in the petition concerns the exclusion from the jury of persons with scruples against the death penalty, resulting in a "death qualified jury." See Grigsby v. Mabry, 758 F.2d 129 (8th. Cir. 1985) (en banc), petition for cert. filed sub nom., Lockhart v. McCree,

53 U.S.L.W. 3870 (U.S. May 29, 1985) (no. 84-1865). This issue was squarely raised in petitioner's previous petition, and thus is a successive writ, disallowed under Rule 9(b), Rules Governing Section 2254 Cases. The issue was determined adversely to petitioner in the prior petition, the prior determination was on the merits, Moore v. Maggio, 740 F.2d 308 (5th Cir. 1984), and the ends of justice would not be served by reaching the merits of this application. Sanders v. United States, 373 U.S. 1, 15 (1963); 28 U.S.C. § 2244. The second issue raised in the petition is the asserted prejudicial effect of the prosecutor's statements concerning appellate review in the prosecutor's closing argument, in light of the Supreme Court's recent decision in Caldwell v. Mississippi, 105 S. Ct. 2633 (1985). The Court in Caldwell held that it is constitutionally impermissible to rest the death penalty on the determination of a sentencer who has been led to believe that responsibility rests elsewhere. We conclude that this issue also was raised in the previous petition, in which petitioner alleged that the Louisiana Supreme Court failed to consider adequately that the death penalty was imposed as a result of "passion, prejudice, and other arbitrary factors, including ... the injection of appellate review." 740 F.2d at 319 n.10. Raised here for the second time, the issue is barred by Rule 9(b) and the principles enunciated in Sanders. We ruled in the previous petition that "the prosecutor's brief reference to appellate review [did not] diminish[] the jury's sense of responsibility for its sentence." 740 F.2d at 320. This pronouncement is consistent



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with the rule set forth in Caldwell. Alternatively, even if we were to conclude that this issue is being raised in this petition for the first time, we must deny it as an abuse of the writ, Rule 9(b). In Jones v. Estelle, 722 F.2d 159 (5th Cir. 1983) (en banc), we ruled that new claims in a successive petition must be dismissed if the failure to include them in a prior petition is an abuse of the writ. Claims must be included in the prior petition if a competent attorney should have been aware of the claims at the time of the prior petition. Id. at 169. That a competent attorney should have been aware of this claim is apparent from the Supreme Court's Caldwell opinion. See 105 S. Ct. at 2642.

SO ORDERED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS

FILED

No. 85-4706

OCT - 3 1985

GILBERT E. GANUCHEAU  
CLERK

ALVIN R. MOORE, JR.,

Petitioner-Appellant,

versus

FRANK BLACKBURN, Warden,  
Louisiana State Penitentiary,

Respondent-Appellee.

Appeal from the United States District Court for the  
Western District of Louisiana

Before GEE, POLITZ, and RANDALL, Circuit Judges.

BY THE COURT:

IT IS ORDERED that appellant's motion for leave to appeal  
in forma pauperis is GRANTED.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION

ALVIN R. MOORE, JR.,  
Petitioner,

Civil Action  
No. 85-2864

V.

FRANK BLACKBURN, Warden,  
Louisiana State Penitentiary  
Angola, Louisiana,  
Respondent.

MEMORANDUM OPINION

Alvin R. Moore, Jr., petitioner, was convicted in a Louisiana State Court of capital murder and sentenced to die. After exhausting his state remedies, petitioner sought federal habeas relief. Relief was granted at the district court; however, the Fifth Circuit reversed and vacated the stay of execution. Moore v. Maggio, 740 F.2d 308 (5th Cir. 1984), writ denied, U.S. Sup. Ct. Slip Op. No. 84-5717 (1985).

Petitioner again comes before this court seeking federal habeas relief, asserting two bases:

- (1) The death-qualification of petitioner's guilt phase jury was unconstitutional; and
- (2) Comments by the prosecutor were unconstitutional in that they led the jury to believe that the respon-

sibility for determining the appropriateness of the death sentence rests elsewhere.

Concerning the unconstitutionality of "death-qualified" juries, the petitioner has already raised this issue unsuccessfully before the court. Moore, 740 F.2d at 321. As to the prosecutor's comments concerning appellate review of the jury's sentence decision, this issue also has been considered and rejected by the Fifth Circuit. Moore, 740 F.2d at 320. Moreover, Caldwell v. Mississippi, 105 S. Ct. 2633 (1985), the recent Supreme Court opinion petitioner cites as the basis of his argument, is readily distinguishable from the case now being considered. In Caldwell, the prosecutor "forcefully argued" that the "responsibility for determining the appropriateness of a death sentence rests not with the jury but with the appellate court ...." Id at 2636-37. The prosecutor's statement in this case, taken as a whole, show that he was instilling the jury with the sole responsibility for this decision. Trial Transcript at 773-76. Additionally, it is important to note that no contemporaneous objection was made by the defense attorney.<sup>1</sup>

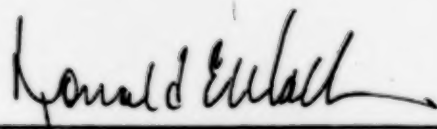
Also the case at bar can be distinguished on other grounds. In Caldwell, supra, the statements by the

<sup>1</sup>The failure to object contemporaneously in itself could preclude petitioner from raising this issue here without a showing of just cause or actual prejudice. Wainwright v. Sykes, 97 S. Ct. 2497 (1971). However, the court does not decide this issue, basing its holding on the merits.

prosecutor remained uncorrected by the court. Id at 2641. Even though no objection was made in the matter under consideration, the trial judge's jury instructions clearly indicated that the decision on the death sentence rested with the jury. Moore, 740 F.2d at 319.

For the aforementioned reasons, petitioner's writ of habeas corpus is denied. Petitioner's request for stay of execution is denied.

DATED AND SIGNED at Monroe, Louisiana, this  
2nd day of October, 1985.

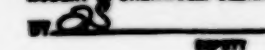


UNITED STATES DISTRICT JUDGE

FILED

OCT 2 1985

W. J. SHERWELL CLERK

BY  DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION

ALVIN R. MOORE, JR.

versus

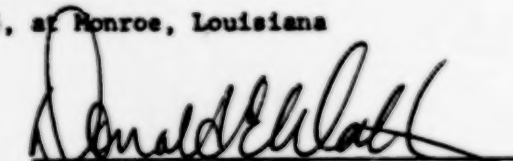
CIVIL ACTION NO. 85-2864

FRANK BLACKBURN, WARDEN  
LOUISIANA STATE PENITENTIARY

ORDER

It is hereby ordered that the petitioner is granted pursuant to 28 USC 2253 and Rules of Appellate Procedure 22 a Certificate of Probable Cause authorizing h's appeal his appeal to the United States Court of Appeals for the Fifth Circuit from the final judgment and order of this Court entered this date.

October 2, 1985, at Monroe, Louisiana

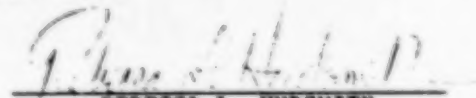
  
DONALD E. WALTER  
UNITED STATES DISTRICT JUDGE



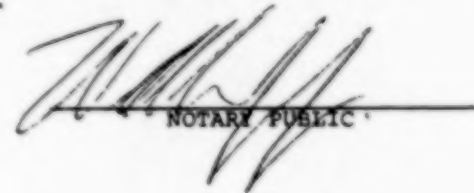
A F F I D A V I T

The following is a true and accurate copy of the order of the United States District Court for the Western District of Louisiana as read to me by telephone on October 3, 1985, by Mike Donald, law clerk to the Honorable Donald Walters:

No. 85-4706 Order. By order of the Fifth Circuit the above captioned was remanded to this court for the limited purpose of enabling the court to reconsider the granting of a Certificate of Probable Cause. Upon reconsideration, the court recalls the previously granted Certificate of Probable Cause as improvidently granted and the court herein denies the petitioner's request for a Certificate of Probable Cause. A Certificate of Probable Cause requires petitioner to make a substantial showing of denial of a federal right. Barefoot v. Estelle, 103 S.Ct. 3383 at 3394 (1983). Reviewing petitioner's request, the Court holds a finding of Probable Cause to be untenable in light of our Memorandum Ruling. The Court feels this conclusion is not debatable among jurists of reason. Fabian v. Reed, 714 F.2d 39 at 40 (5th Cir. 1983). It is hereby ordered that Petitioner's request for Certificate of Probable Cause is denied. Thus done and signed at Monroe, La. this 3rd day of October, 1985.

  
REBECCA L. HUDSMITH

THUS DONE AND SIGNED at Shreveport, Louisiana, this  
3<sup>rd</sup> day of October, 1985.

  
NOTARY PUBLIC

**The Supreme Court of the State of Louisiana**

STATE EX REL ALVIN R. MOORE, JR.

VS.

NO. 85-KP- 1875

FRANK BLACKBURN, WARDEN  
LOUISIANA STATE PENITENTIARY

-----  
IN RE: Moore, Alvin R. Jr.; Applying for Stay, Supervisory Writ and Writ of Habeas Corpus; Parish of Bossier 26th Judicial District Court Div. "B" Number 57,718  
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October 1, 1985

Denied.

WFM

PFC

JLD

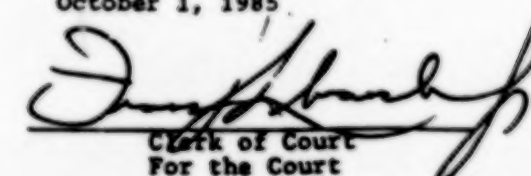
FAB

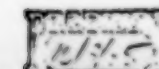
JCW

HTL

DIXON, C.J., would stay the execution on the Grigsby issue in view of the stay by the United States Supreme Court in Celestine v. La. on September 25, 1985.

Supreme Court of Louisiana  
October 1, 1985

  
Clerk of Court  
For the Court



APPENDIX C

ALVIN R. MOORE, JR.  
PRISON NUMBER: 97556  
PLACE OF CONFINEMENT:  
LOUISIANA STATE  
PENITENTIARY AT  
ANGOLA, LOUISIANA

NUMBER 57718  
26th JUDICIAL DISTRICT COURT

Petitioner,

VERSUS

FRANK BLACKBURN, WARDEN  
LOUISIANA STATE  
PENITENTIARY AT  
ANGOLA, LOUISIANA,

BOSSIER PARISH, LOUISIANA

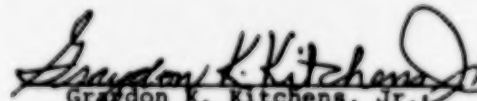
Respondent.

ORDER

Considering the foregoing,

IT IS ORDERED, ADJUDGED AND DECREED that the  
Petition for Stay of Execution, Evidentiary Hearing,  
Post-Conviction Relief and Habeas Corpus is hereby DENIED.

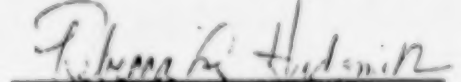
Benton, Louisiana, on this 30<sup>th</sup> day of  
September, 1985.

  
Graydon K. Kitchens, Jr.  
District Judge

CERTIFICATE

I HEREBY CERTIFY that I have this date caused to be  
mailed a copy of the above and foregoing to Mr. Henry N.  
Brown, District Attorney, Bossier Parish Courthouse, Benton,  
LA 71006.

Shreveport, Louisiana this 3<sup>rd</sup> day of October, 1985.

  
REBECCA L. HUDSMITH

**FILED**  
SEP 30 1985  
DEPUTY CLERK  
26TH JUDICIAL DISTRICT COURT  
BOSSIER PARISH, LOUISIANA